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BEFORE THE ARIZONA CORPORATION COMMISSION
DOCKETED

CARL J. KUNASEK

Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

SEP 17 1999

DOCKETED BY

IN THE MATTER OF THE APPLICATIONS
OF OPTEL (ARIZONA) TELECOM, INC.,
RIO VIRGIN TELEPHONE COMPANY,
CABLE PLUS COMPANY, L.P.
AND U. S. DIAL TONE, INC.
FOR APPROVAL OF INTRALATA
TOLL DIALING PARITY PLANS

DOCKET NOS. T-03365A-99-0451
T-01869A-99-0452
T-03154A-99-0461
T-03489A-99-0468

DECISION NO. 01905ORDER

Open Meeting
September 14 and 15, 1999
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Between August 6 and 12, 1999 Optel (Arizona) Telecom, Inc. and Rio Virgin Telephone Company filed Applications for Commission approval of IntraLATA Toll Dialing Parity Plans. In addition, Cable Plus Company, L.P. and U. S. Dial Tone, Inc. requested a waiver of the requirement to provide intraLATA toll dialing parity.

2. Section 251(b)(3) of the Telecommunications Act of 1996 (1996 Act) imposes on all local exchange carriers (LECs), the obligation to provide dialing parity to competing providers of telephone exchange service and telephone toll services, and the duty to permit all such providers nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

3. The term "dialing parity" is defined in Section 153(15) of the 1996 Act, 47 U.S.C.A. Section 153(15) as meaning that "a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their call to the telecommunications services provider of the customer's designation from among two or more telecommunications services

1 providers (including such local exchange carrier)." Essentially, dialing parity is a technological
2 capability that enables a telephone customer to route a call over the network of the customer's
3 preselected carrier without having to dial an access code of extra digits.

4 4. Under A.A.C. R14-2-1111, each LEC in Arizona is also required to provide 2-PIC toll
5 equal access where technically and economically feasible, and in accordance with any procedure the
6 Commission may order.

7 5. On August 8, 1996, the Federal Communication Commission (FCC) in its Second
8 Report and Order in Docket 96-98, In the Matter of Implementation of the Local Competition
9 Provisions in the Telecommunications Act of 1996, required all LECs to file intraLATA toll dialing
10 parity plans with their respective State commissions for approval. That requirement and the remainder
11 of the FCC's dialing parity rules, 47 C.F.R. Sections 51.205-51.215, were subsequently vacated by
12 the Eighth Circuit Court of Appeals as exceeding the FCC's jurisdiction in California v. FCC, 124
13 F.3d 934 (8th Cir. 1997). On January 25, 1999, the United States Supreme Court reversed the Eighth
14 Circuit's jurisdictional rulings, including its rulings regarding intraLATA toll dialing parity. AT&T
15 Corp. v. Iowa Utilities Board, __ U.S. __, 119 S.Ct. 721 (1999).

16 6. On March 23, 1999, the FCC released an Order that waived the Section 51.213 schedule
17 for the implementation of intraLATA toll dialing parity.¹ In its Order, the FCC issued a revised
18 schedule requiring all LECs not already having done so to file dialing parity plans by April 22, 1999,
19 with their respective State commissions for approval. Subsequently, after reviewing and approving
20 some plans itself, the FCC ordered carriers, which failed to meet the original deadline to once again
21 file plans with their respective State commission for approval

22 7. Section 51.205 of the FCC rules, 47 C.F.R. Section 51.205 requires that all LECs offer
23 dialing parity for all originating telecommunications services that require dialing to route a call. Under
24 Section 51.209, a LEC is to implement dialing parity based upon LATA boundaries through a
25 presubscription process that permits a customer to select a carrier to which all designated calls on a
26 customer's line will be automatically routed.

27 ¹ Implementation of the Local Competition Provisions of the Telecommunication Act of 1996, and Petition of
28 Southwestern Bell Telephone company, Pacific Bell, and Nevada Bell for Expedited Declaratory Ruling on Interstate
IntraLATA Toll Dialing Parity or, in the Alternative, Various Other Relief, Order, CC Docket No. 96-98, NSD File No.
L-98-121, FCC 99-54 (rel. March 23, 1999)(March 23 Order).

1 LECs are required to allow a customer to presubscribe, at a minimum, to one
2 telecommunications carrier for all interLATA toll calls and to the same or to another
3 telecommunications carrier for all intraLATA toll calls. Further, a LEC may not assign automatically
4 a customer's intraLATA toll traffic to itself, to its subsidiaries or affiliates, to the customer's
5 presubscribed interLATA or interstate toll carrier, or to any other carrier, except when, in a State that
6 already has implemented intrastate, intraLATA toll dialing parity, the subscriber has selected the same
7 presubscribed carrier for both interLATA and interLATA toll calls.

8 8. The proposed plans by the above-listed carriers state that they are in compliance with
9 both FCC and ACC rules governing intraLATA toll dialing parity.

10 9. Interested parties should be allowed to comment on the proposed IntraLATA Toll
11 Dialing Parity Plans filed by the above-listed competitive LECs on or before September 24, 1999.

12 10. If no oppositions to the proposed plans are received by the Commission on or before
13 September 24, 1999, and/or any necessary modifications deemed necessary by Commission Staff as
14 a result of its ongoing review of the proposed plans are agreed to by the affected carrier, the plans, as
15 modified, and the requests for waiver should be deemed approved.

16 CONCLUSIONS OF LAW

17 1. The Commission has jurisdiction over the local exchange carriers named herein and over
18 the subject matter of their respective applications for approval of IntraLATA Toll Dialing Parity Plans
19 or for waiver of this requirement.

20 2. To the extent the proposed IntraLATA Dialing Parity Plans of the LECs herein named
21 are unopposed and/or modified as required by Commission Staff, the plans shall be deemed to comply
22 with applicable FCC and ACC rules.

23 3. The Commission maintains continuing jurisdiction over this matter to the extent
24 permitted pursuant to the powers granted the Commission by the Arizona Constitution, Statutes,
25 Commission Rule, and the 1996 Act and Rules promulgated thereunder.

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27 ...

28 ...

ORDER

THEREFORE, IT IS ORDERED that all interested parties shall have until September 24, 1999, to file comments on the proposed IntraLATA Toll Dialing Parity Plans filed with the Commission.

IT IS FURTHER ORDERED that if no oppositions to the proposed plans are received by the Commission on or before September 24, 1999, and/or necessary modifications deemed necessary by Commission Staff as a result of its ongoing review of the proposed plans are agreed to by the affected carrier, the plans, as modified, and the requests for waiver should be deemed approved.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

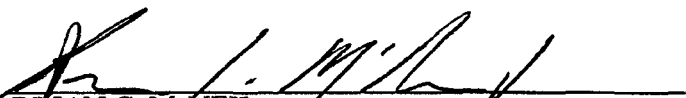
BY ORDER OF THE ARIZONA CORPORATION COMMISSION


CHAIRMAN


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 17th day of September, 1999.


BRIAN C. McNEIL
Executive Secretary

DISSENT: _____

DRS:KDM:sjs\MAS

Decision No. 6196 S